

Remarks

The Examiner has issued a restriction requirement in the subject application. Claims 1 to 12, 13, 17 and 18 have been amended. Claims 14 to 16 and 19 to 25 have been cancelled without prejudice or disclaimer, and with the understanding that Applicants may pursue the nonelected subject matter of cancelled claims 19 to 25 in a divisional application. Claims 13 and 17 have been withdrawn as nonelected subject matter.

The recitation of the term “solvate” has been deleted from claims 1 to 13, 17 and 18 as being unnecessary, superfluous and possibly confusing inasmuch as the claims to the compounds *per se*, or pharmaceutically acceptable salts thereof, already encompasses the various forms that such compounds and salts may take, such as whether the compounds are crystalline or amorphous, in the form of a hydrate or solvate, or in any polymorphic form. The removal of the “solvate” recitations therefore, is not intended to change the scope of the claims in any respect and, in fact, does not do so.

Further amendments to claims 6 to 10, 13, 17 and 18 have removed improper multiple dependencies.

All other amendments are formalistic in nature and simply place the claims in a format more reflective of standard U.S. patent prosecution.

No new matter has been introduced by any of the amendments.

1. Priority

The Examiner asserts that for Applicants to be entitled to the benefit of a prior-filed application under 35 U.S.C. 371, a specific reference to the prior-filed application in compliance with 37 C.F.R. 1.78(a) must be included in the first sentence of the specification (following the title) or in an application data sheet.

Applicants submit that the paragraph to which the Examiner refers, is only required where priority is being claimed from a non-provisional application (such as a continuation, CIP, divisional, *etc.*) and is not applicable where (as is the case here), Applicants are filing the U.S. national stage application of a PCT application that designates the U.S. In this particular case,

the PCT application claims priority to a GB priority application. Applicants therefore respectfully request that the Examiner withdraw this objection.

2. Restriction Requirement

The Examiner has issued a 18-way restriction (Groups I to XVIII) of the pending claims 1 to 25. Each of the groups as identified by the Examiner relies on the assertion that $R^3 = H$ (as defined in the Examiner's created sub-genera of groups I, II and III). Further, group I relies on the variable "r" having a value of 5.

Applicants submit that since it is Applicants' belief that the pending claims prohibit " R^3 " from being a hydrogen and "r" from having a value of 5, the Examiner's created subgenera of groups I, II and III are not encompassed by any of the pending claims. Further, it appears to Applicants that the narrowly defined subgenera of groups I to III, even if they did recite suitable values for the variables " R^3 " and "r", still exclude many compounds that are encompassed by the scope of claim 1 and which are not identified by the Examiner as belonging to any other group. For at least these reasons, Applicants are unable to elect any of the groups as set forth by the Examiner. Applicants attempted to contact the Examiner by telephone on August 7, 2007 to discuss the restriction requirement in detail, but was informed by the Examiner's answering machine that the Examiner was out of the office and would be unavailable until August 19, 2007.

In view of the errors present in the proposed groups I to III, Applicants traverse the currently issued restriction requirement for not covering the recited subject matter of the pending claims. Applicants respectfully request the issuance of a corrected restriction requirement, in which the time has been reset, that correctly defines groups I to III and which encompasses the entire recited scope of claim 1.

In an effort to expedite prosecution, Applicants propose and would be willing to elect with traverse a revised Group I subgenus wherein the variables " R^3 ", "v" and "r" are not limited beyond what is recited in claim 1. Claims 1, 3, 4, 5, 6, 7, 8, 9, 12 and 18 would be encompassed by this proposed subgenus. The election would be made with traverse because Applicants would submit that it would not have been an undue burden on the Examiner to have broadened the search of the prior art to allow for a greater breadth of the created groups I, II and III. In electing

the proposed subgenus of group I, Applicants understand that if the compounds of group I are subsequently found allowable, then the withdrawn process claim 13 and method claim 17 would be rejoined in accordance with the provisions of MPEP 821.041.


3. Conclusion

The foregoing amendments and remarks are being made to place the application in a better condition for allowance. Applicants respectfully request that the Examiner reissue a corrected restriction requirement. Should the Examiner find that an interview would be helpful to further prosecution of this application, he is invited to telephone the undersigned at his convenience.

Except for issue fees payable under 37 C.F.R. 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or to credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **Constructive Petition for Extension of Time** in accordance with 37 C.F.R. 1.136(a)(3).

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